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Pinkette Clothing, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PINKETTE CLOTHING, INC., a
California corporation,

Plaintiff,

vs.

COSMETIC WARRIORS
LIMITED, believed to be a United
Kingdom limited company doing
business as LUSH HANDMADE
COSMETICS, and DOES 1-9,
inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF**

**(1) NO TRADEMARK
INFRINGEMENT, NO
LIKELIHOOD OF CONFUSION,
AND NO FALSE ASSOCIATION;**

**(2) DEFENDANTS HAVE
DEVELOPED NO TRADEMARK
RIGHTS FOR CLOTHING;**

**(3) DEFENDANTS ARE BARRED BY
LACHES FROM ALLEGING A
LIKELIHOOD OF CONFUSION;**

AND

**(4) DEFENDANTS' FEDERAL
TRADEMARK APPLICATION
AND CANCELLATION
PROCEEDING ARE IMPROPER;**

DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff Pinkette Clothing, Inc. ("Pinkette" or "Plaintiff"),
alleges and claims the following:

I. THE PARTIES

1. Pinkette is a California corporation with a principal place of business located in this judicial district at 4550 Alcoa Avenue, Vernon, California 90058.

2. Upon information and belief, Defendant Cosmetic Warriors Limited, is a United Kingdom limited company doing business as Lush Handmade Cosmetics with a place of business located at 29 High Street, Poole, Dorset BH15 1AB, United Kingdom (collectively with Does 1-9, "CWL").

3. The true names and capacities, whether individual, corporate or otherwise of Defendants Does 1-9 inclusive, are unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by those Defendants. At all times herein mentioned, Defendants Does 1-9 inclusive were the agents, servants, employees or attorneys of their co-defendants, and in doing the things hereinafter alleged were acting within the course and scope of their authority as those agents, servants, employees or attorneys, and with the permission and consent of their co-defendants.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this subject matter of this Complaint pursuant to 28 U.S.C. §§ 2201, 1331, and 1367 in that this is an action for a declaratory judgment involving rights arising from the federal Lanham Act, 15 U.S.C. Sections 1051, *et al.*

1 5. This Court has personal jurisdiction over Defendants on the grounds
2 that Defendants actively direct their marketing, advertising, promotions, sales, and
3 services at California residents as their customers, including through their website,
4 www.lushusa.com, and through numerous retail stores located in this judicial
5 district.

6 6. Venue is proper pursuant to 28, U.S.C. § 1391(b) as to the Defendants
7 because a substantial part of their acts or omissions giving rise to the claims herein
8 occurred in this judicial district.

9 10 **III. FACTUAL BACKGROUND**

11 12 **A. Pinkette and Its Trademark LUSH for Clothing**

13
14 7. Pinkette sells and has continuously sold clothing under the LUSH
15 trademark in commerce in the United States since at least July 2003. Over the
16 years, Pinkette has developed extensive goodwill and a highly acclaimed reputation
17 for trendsetting women's apparel, creating stand out pieces that are versatile and
18 uncompromising in style with California flair.

19 8. Pinkette sells its clothing through numerous boutiques as well as
20 through a number of larger retail stores throughout the country and North America
21 and, as a result, has had an undeniably strong nationwide presence as LUSH in
22 women's clothing for essentially the entire twelve (12) years.

23 9. Additionally, on May 11, 2009, Pinkette filed with the United States
24 Patent and Trademark Office ("USPTO") for federal trademark registration of its
25 LUSH trademark for clothing. The application affords Pinkette constructive
26 nationwide notice of its claim of ownership of the LUSH trademark for clothing.
27 The USPTO examined the LUSH mark, found it allowable for registration, and
28 published it for opposition on April 27, 2010. On July 13, 2010, following this

1 examination process and receiving no opposition from anyone during the statutory
 2 opposition period, the USPTO acknowledged Pinkette's right to use the LUSH
 3 trademark for clothing by granting it U.S. Trademark Registration No. 3,816,441.
 4 Pinkette attaches hereto as Exhibit 1 a true and correct copy of this trademark
 5 registration.

7 **B. Pinkette's Due Diligence Before and After Adopting LUSH**

9 10. Before beginning to use LUSH for clothing, Pinkette informally
 10 searched the industry, the major industry sources, and the Internet for any uses of
 11 LUSH for clothing in the United States and North America and found nothing.
 12 Only later did Pinkette encounter the entry into U.S. marketplace of LUSH
 13 HANDMADE COSMETICS for cosmetics and perfumes. Pinkette began finding
 14 retail stores opening in various locations with signage bearing the LUSH trade
 15 name accompanied by signage bearing the phrase FRESH HANDMADE
 16 COSMETICS and selling LUSH HANDMADE COSMETICS cosmetics and
 17 perfumes.

18 11. Pinkette never uncovered any clothing items for sale in these retail
 19 stores. Indeed, upon information and belief, to Pinkette's knowledge, CWL had
 20 never and has never sold any clothing items or clothing-related items (other than
 21 perhaps uniforms purportedly sold only to its own store employees), let alone any
 22 clothing items displaying the word LUSH -- let alone any clothing items having any
 23 clothing tag or label that displayed the word LUSH as a trademark.

24 12. Indeed, it appears that CWL in 1996 applied for a U.S. trademark
 25 registration for LUSH for cosmetics and other related goods. In the application,
 26 CWL did not list any clothing or clothing-related goods. Also, while CWL has
 27 filed or obtained other U.S. trademark applications for LUSH over the years, the
 28 applications never listed any clothing or clothing-related goods (before CWL

engaged in the present dispute, that is). Pinkette attaches hereto as Exhibit 2 a true and correct list of CWL U.S. trademark applications and registrations, known to Pinkette, showing that CWL filed a U.S. trademark application for LUSH for clothing only very recently -- after CWL engaged in the present dispute.

C. Pinkette's Canadian Application for LUSH for Clothing

13. In or about 2013, Pinkette decided it should register its LUSH trademark in Canada. It had been selling its LUSH clothing in Canada since 2003, and its sales in Canada had grown considerably throughout the following years. Pinkette learned, however, that in Canada, unlike in the U.S. where CWL had never attempted to register LUSH for clothing, CWL has a Canadian trademark registration for LUSH for clothing.

14. Pinkette therefore commissioned a formal, independent trademark in-use investigation to determine whether CWL was indeed selling any clothing items in Canada because, if CWL is not selling clothing in Canada under the LUSH trademark, the Canadian Trademark Office should cancel CWL's registration for clothing. The investigation reported that, in addition to there being no mention on any CWL website of any clothing articles for sale, personnel at CWL had told the independent investigator that T-shirts displaying CWL's LUSH HANDMADE COSMETICS were for the store employees' uniforms only and that CWL does not sell any apparel with any LUSH trademark on them.

15. The investigation, therefore, concluded that, apart from perhaps some LUSH HANDMADE COSMETICS uniforms that it claims it sells internally to its own store employees, CWL does not sell any clothing bearing any trademark that contains the word LUSH.

16. As a result, on September 2, 2014, Pinkette filed in Canada a trademark application for LUSH for clothing and a petition requesting that the

1 Canadian Trademark Office investigate and cancel CWL's registration for LUSH
2 for clothing on the grounds that CWL does not sell clothing in Canada under the
3 LUSH trademark.

4 5 **D. CWL's Response to Pinkette's Challenge in Canada**

6
7 17. In December 2014, following Pinkette's challenge in Canada, CWL
8 filed a federal trademark application in the United States for LUSH for clothing,
9 later given Serial No. 86/475,096. Pinkette attaches hereto as Exhibit 3 a true and
10 correct copy of CWL's U.S. trademark application for LUSH for clothing. For its
11 formal response to Pinkette's challenge in Canada, CWL submitted to the Canadian
12 Trademark Office evidence of CWL's supposed sales of clothing in Canada under
13 the LUSH trademark. Pinkette attaches hereto as Exhibit 4 a true and correct copy
14 of CWL's responsive submission in Canada. In the submission, CWL alleges and
15 admits that the only clothing CWL purportedly sold in Canada and the U.S. were t-
16 shirts, tank tops, sweatshirts, and aprons it sold internally to its own retail store
17 employees as their uniforms. (*Id.* at ¶ 11).

18 18. Upon information and belief, the uniforms were/are not sold to any of
19 the retail stores' customers, nor were they intended for resale to any of the retail
20 stores' customers.

21 19. As part of CWL's has recently filed federal trademark application for
22 LUSH for clothing, CWL submitted a declaration, signed on December 9, 2014 by
23 its attorney of record, John A. Clifford, Esq., stating under penalty of 18 U.S.C. §
24 1001 that it is "the owner of the trademark[] sought to be registered; the applicant []
25 is using the mark in commerce on or in connection with the goods[] in the
26 application[]; and] the specimen(s) shows the mark as used on or in connection with
27 the goods[] of the application."
28

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20. On March 23, 2015, the USPTO issued an office action in connection with CWL's trademark application for LUSH for clothing refusing to register the mark, finding that it would create a likelihood of confusion with Pinkette's registration for LUSH for clothing. Pinkette attaches hereto as Exhibit 5 a true and correct copy of this office action. In response, on June 10, 2015, CWL filed a petition to cancel Pinkette's registration and, shortly thereafter, a request to suspend examination of CWL's trademark application until CWL's petition to cancel is decided or otherwise resolved. Pinkette attaches hereto as Exhibit 6 a true and correct copy of CWL's petition to cancel Pinkette's U.S. trademark registration for LUSH for clothing.

21. In its petition to cancel, CWL admits that it primarily has sold its purported LUSH clothing "to employees for use while at work" and that there are no rules "in place" that limit the employees' "use of the clothing to work hours or work locations." (*Id.* at ¶ 4). CWL also admits that its only other clothing evidence is the gift wrapping it sells to wrap its cosmetics in, which it only recently began referring to as being reusable as scarves -- only after CWL had engaged in the present dispute.

22. Additionally, in both CWL's evidence submission in Canada and its petition to cancel Pinkette's U.S. trademark registration, CWL broadly claims to have sold LUSH clothing before 2003, but never presented any evidence of this. Pinkette therefore additionally contends that Pinkette's trademark use of LUSH for clothing in the U.S. (and Canada as well) is senior to any supposed trademark use of LUSH for clothing by CWL.

23. Lastly, the scant evidence Pinkette has seen of CWL's supposed sales of these uniforms demonstrates that such sales were so small as to be token or, if not token, "highly limited" in nature. That is, the evidence CWL submitted to the Canadian Trademark Office revealed that CWL's alleged sales of t-shirts and tank tops averaged no more than roughly \$255 per month -- for the entire United States.

(See, Exhibit 4, at ¶¶ 17 and 19 adding up to \$4600 for the 18 months of voluntary reporting, and ¶ 22, in which CWL attested that these figures are representative of its sales stretching back to September 2011).

24. Despite the foregoing reasons to conclude that CWL has not developed any exclusive trademark rights in LUSH for clothing, that CWL's uses of the term LUSH are insufficient to create any likelihood of confusion, and that there is no sufficient evidence to suggest that CWL is even the senior trademark user of LUSH for clothing, CWL incorrectly alleges in its petition to cancel not merely that Pinkette's federal registration harms CWL but also that Pinkette's commercial use infringes and creates a false association with CWL's exclusive trademark rights. Such allegations, despite being entirely wrong, should be adjudicated and resolved in an Article III District Court, not the Trademark Trial and Appeal Board.

25. These actions and opposing positions concerning the rights to the LUSH trademark for clothing and to any federal trademark registration therefor give rise to the following claims for relief.

IV. FIRST CLAIM FOR RELIEF

Declaratory Judgment that CWL Has Not Developed Any Exclusive Trademark Rights for Clothing

26. Pinkette hereby repeats and incorporates herein the allegations set forth in paragraphs 1 through 25 above.

27. CWL contends that its LUSH HANDMADE COSMETICS design on its employee uniforms entitles CWL to exclusive rights in the term LUSH as a trademark for clothing.

28. Pinkette contends, to the contrary, that CWL's alleged use of LUSH or LUSH HANDMADE COSMETICS, including that which CWL itself has alleged, is legally insufficient to entitle CWL to trademark rights in the term LUSH or the

1 phrase LUSH HANDMADE COSMETICS for clothing. Pinkette contends instead
2 that CWL's retail employee uniforms constitute, at most, point-of-sale
3 advertisements, much like signage, for its handmade cosmetics and perfumes, and
4 not trademark use for clothing or any clothing-related goods.

5 29. That is, CWL's employee uniforms are merely "items incidental to
6 conducting" CWL's actual business. CWL's actual business is marketing and
7 selling cosmetics, perfumes, and the like, and as such, this use on employee
8 uniforms is not sufficient to establish exclusive trademark rights in the term LUSH
9 for clothing -- any more than CWL's signage can establish trademark rights in
10 LUSH for wood siding.

11 30. Accordingly, there exists an Article III case and controversy between
12 CWL and Pinkette concerning whether CWL's uniforms with the mark "LUSH"
13 qualify as trademark use sufficient for CWL to establish trademark rights in LUSH
14 for clothing.

15 31. Pinkette is being harmed, and irreparably so, by CWL's contrary
16 positions and will continue to be so harmed unless and until such CWL's actions
17 are enjoined by judgment of this Court. These harms include CWL's actions of
18 recently filing a competing and mutually exclusive federal trademark application
19 for LUSH for clothing stating that it is "the owner of the trademark[] sought to be
20 registered; the applicant [] is using the mark in commerce on or in connection with
21 the goods[] in the application[; and] the specimen(s) shows the mark as used on or
22 in connection with the goods[] of the application."

23 32. Moreover, these harms also include CWL's recently filed petition to
24 cancel Pinkette's federal trademark registration, in which CWL alleges it is the
25 rightful owner of LUSH for clothing. These actions have drawn a dark cloud of
26 uncertainty over Pinkette's long-held rights to the LUSH trademark in the United
27 States. Pinkette's trademark rights now appear to the purchasing public and to
28 Pinkette's many retail store accounts as being challenged, causing these retail stores

1 to hesitate or question Pinkette's rights, question whether they might be dragged
2 into a trademark infringement action, and question whether they might have to
3 remove inventory from shelves or lose a valued and sought-after brand for their
4 customers.

5 33. Pinkette therefore is entitled to a judgment from this Honorable Court
6 declaring that CWL's use of the term LUSH on any clothing items is insufficient to
7 establish trademark rights for CWL in the term LUSH for clothing. Such a
8 determination and declaration is necessary and appropriate so that the parties can
9 ascertain their respective rights and duties under law and equity regarding the
10 LUSH mark in the class of clothing.

11 **V. SECOND CLAIM FOR RELIEF**

12 **Declaratory Judgment of No Likelihood of Confusion,** 13 **No False Association, and No Trademark Infringement**

14 34. Pinkette hereby repeats and incorporates herein the allegations set
15 forth in paragraphs 1 through 33 above.

16 35. Through CWL's statements to Pinkette and to the USPTO, CWL
17 contends that there is a likelihood of confusion and false association among the
18 relevant public as a result of the coexistence of Pinkette's use of LUSH as its
19 trademark for clothing and, either, (1) CWL's sales of its store uniforms that say
20 LUSH HANDMADE COSMETICS to CWL's own store employees; (2) CWL's
21 selection of gift wrapping options used to wrap purchased cosmetics and perfumes
22 in (which CWL now, after engaging in the present dispute, market as being reusable
23 as scarves); and/or (3) CWL's sales of LUSH cosmetics, perfumes, and related
24 goods.

25 36. Pinkette contends the opposite. Pinkette contends that there is no
26 likelihood of confusion and no false association resulting from the coexistence of
27
28

1 Pinkette's use of LUSH as its trademark for clothing and (1) CWL's sales of its
2 store uniforms that display the LUSH HANDMADE COSMETICS logo; (2)
3 CWL's selection of gift wrapping options; or (3) CWL's sales of LUSH cosmetics,
4 perfumes, and related goods.

5 37. CWL has not developed exclusive trademark rights in the term LUSH
6 for clothing by this alleged use of its cosmetics and perfumes logo, LUSH
7 HANDMADE COSMETICS, on its retail store employee uniforms. Even
8 assuming for argument's sake that CWL's uniforms sales in the United State
9 predate Pinkette's trademark use and that CWL's uniforms sales in the United
10 States were sufficient and sufficiently continuous to maintain trademark rights
11 throughout this time, CWL concedes that its alleged sales of its uniforms are
12 limited to its own store employees. These are entirely internal sales -- or possibly
13 no real sales at all -- and the uniforms function as point of sale advertisements and
14 no more, like numerous other pieces of signage typically inside such retail stores.
15 CWL also places its LUSH HANDMADE COSMETICS on its store windows and
16 signage, but this does not entitle it to exclusive trademark rights in LUSH for sheet
17 glass or sign boards.

18 38. As for CWL's gift wrapping, Pinkette is not aware of any reference to
19 "scarves" until very recently, here in early 2015, which is after CWL engaged in
20 this dispute. Earlier this year, CWL began saying in its marketing that its gift
21 wrapping can be reused as scarves, but this only supports Pinkette's position that
22 CWL's uniforms are insufficient and that CWL had likewise felt this all along --
23 until Pinkette challenged CWL's Canadian trademark registration for LUSH for
24 clothing. Upon information and belief, CWL's gift wraps were never marketed as
25 being reusable as scarves until after CWL engaged in the present dispute. This new
26 marketing is too late to change the trademark rights involved in this dispute.

27 39. This new marketing is also too little. Most products, packaging, and
28 even wrapping are reusable. Reuse is encouraged by all sorts of companies,

1 organizations, and governments. And, once an article is reusable, it is probably
 2 reusable as makeshift clothing of one type or another. This is not sufficient to give
 3 rise to exclusive trademark rights for CWL in the term LUSH for clothing.

4 40. As for CWL's sales of cosmetics, perfumes, or related goods under
 5 LUSH HANDMADE COSMETICS or any other trademark containing the term
 6 LUSH, Pinkette contends that there is no likelihood of confusion and no false
 7 association. In fact, CWL's failure to uncover any instances of confusion or to
 8 raise any likelihood of confusion allegations for over a decade of coexistence in
 9 their respective fields of goods (clothing versus cosmetics and perfumes)
 10 demonstrates that there is no likelihood of confusion and no false association.

11 41. Moreover, the fact that CWL has failed to challenge Pinkette's use of
 12 LUSH for clothing, despite the apparent coexistence of Pinkette's use and CWL's
 13 use since 2003, reveals that CWL itself never did and does not now believe there
 14 really is any likelihood of confusion or false association between the two marks,
 15 given their respective uses.

16 42. Furthermore, the miniscule and limited sales that CWL has alleged
 17 (\$4600 for one 18-month stretch and that this is "representative of" its sales back to
 18 September 2011) are insufficient to create any significant likelihood of confusion.

19 43. Accordingly, there exists an Article III judicable case and controversy
 20 between CWL and Pinkette concerning whether there is any likelihood of confusion
 21 or false association between Pinkette's LUSH trademark for clothing and CWL's
 22 use of LUSH on its employees' uniforms, gift wrapping, or cosmetics or perfume
 23 goods, or any trademark infringement by Pinkette.

24 44. The harms to Pinkette from CWL's actions complained of above apply
 25 equally here.
 26
 27
 28

1 **VI. THIRD CLAIM FOR RELIEF**

2 **Declaratory Judgment that CWL is Barred by Laches from Alleging**
 3 **Likelihood of Confusion or False Association Against Pinkette**
 4

5 45. Pinkette hereby repeats and incorporates herein the allegations set
 6 forth in paragraphs 1 through 44 above.

7 46. In CWL's petition to cancel Pinkette's federal trademark registration,
 8 CWL alleged -- for the first time -- that the concurrent use of Pinkette's federally
 9 registered LUSH trademark for clothing and CWL's purported use on clothing
 10 creates a likelihood of confusion.

11 47. Pinkette, by contrast, contends that Pinkette has been publicly and
 12 commercially using LUSH for clothing since at least July 2003 and that CWL is
 13 barred at this late date by laches from raising a claim of likelihood of confusion
 14 between CWL's employee uniforms that say LUSH HANDMADE COSMETICS
 15 (and CWL's gift wrap, which CWL only now markets as being reusable as scarves)
 16 and Pinkette's use of LUSH as its trademark for clothing.

17 48. Pinkette contends that CWL's choice not to raise any likelihood of
 18 confusion allegations or allegations of false association for well over a decade of
 19 coexistence in their respective fields of goods bars it under the doctrine of laches
 20 from asserting at this late date that there is likelihood of confusion or association.

21 49. Pinkette contends that CWL should be barred by laches for choosing
 22 not to assert its purported rights, if any, year after year for well over a decade while
 23 Pinkette has expended considerable time, effort, investment, and resources in
 24 promoting Pinkette's business and LUSH trademark.

25 50. Upon information and belief, CWL has been aware and on notice of
 26 Pinkette's LUSH brand clothing for many years since Pinkette was being
 27 prominently advertised and sold in large quantities in stores all throughout the U.S.
 28 starting in 2003. In fact, the USPTO published Pinkette's trademark application

1 when Pinkette filed it back on May 11, 2009, and published it for opposition on
 2 April 27, 2010 -- which was over five years ago. Trademark owners are obliged to
 3 monitor and police their trademark rights, including when applications that they
 4 may find objectionable appear published by the USPTO for a period of time set by
 5 federal statute for the express purpose of others coming forward to prevent
 6 registration.

7 51. CWL never did this. Upon information and belief, it watched and
 8 allowed Pinkette's business, marketing, and sales of LUSH clothing to grow greatly
 9 on a nationwide stage, and it watched and allowed Pinkette's application to pass the
 10 statutory opposition period and to register.

11 52. Accordingly, there exists an Article II actual case and controversy
 12 between CWL and Pinkette because procedural fairness dictates that CWL should
 13 be barred from alleging likelihood of confusion against Pinkette due to the
 14 inordinate delay and failure to timely assert its alleged rights.

15 53. The harms to Pinkette from CWL's actions complained of above apply
 16 equally here.

17 **VII. FOURTH CLAIM FOR RELIEF**

18 **Declaratory Judgment That CWL's**

19 **Trademark Application and Cancellation Proceeding Are Improper**

20 54. Pinkette hereby repeats and incorporates herein the allegations set
 21 forth in paragraphs 1 through 53 above.

22 55. In CWL's recently filed federal trademark application for LUSH for
 23 clothing, CWL attested through a declaration under the penalties listed in 18 U.S.C.
 24 § 1001 that it is the owner of the trademark sought to be registered; it is using the
 25 mark in commerce on or in connection with the goods in the application; and the
 26 specimens show the mark as used on the goods listed in the application.
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 28

1 56. In CWL's petition to cancel Pinkette's federal trademark registration,
2 CWL alleged -- for the first time -- that the concurrent use of Pinkette's federally
3 registered LUSH trademark for clothing and CWL's purported use on clothing
4 creates a likelihood of confusion.

5 57. Pinkette, by contrast, contends that Pinkette is the sole and senior user
6 of the LUSH trademark for clothing in several countries including, for purposes of
7 this complaint, the United States. Pinkette contends that it is the only entity entitled
8 to a federal trademark registration in the United States for LUSH for clothing.

9 58. None of CWL's uses known to Pinkette, including those CWL itself
10 has alleged, does not entitle and has never entitled CWL to any trademark rights in
11 any LUSH mark for clothing.

12 59. Pinkette contends, therefore, that the declaration CWL submitted by
13 way of its trademark attorney, Mr. Clifford, is not correct, whether knowingly or
14 not; that no trademark registration can issue therefrom; and that the application
15 itself must be withdrawn.

16 60. Pinkette contends that CWL's petition to cancel is likewise improper
17 and must be withdrawn; that it is inconsistent with CWL's failure to raise any
18 likelihood of confusion allegations for well over a decade of coexistence in their
19 respective fields of goods (clothing versus cosmetics and perfumes).

20 61. Accordingly, Pinkette contends that CWL's federal trademark
21 application for LUSH for clothing is improper, that the declaration submitted with
22 CWL's application is improper; and that CWL's petition to cancel is improper.

23 62. Accordingly, there exists an Article II actual case and controversy
24 between CWL and Pinkette as to whether CWL's trademark application and
25 petition to cancel should be withdrawn, refused, or denied.

26 63. The harms to Pinkette from CWL's actions complained of above apply
27 equally here.

28

VIII. PRAYER FOR RELIEF

WHEREFORE, Pinkette prays that this Honorable Court issue a declaratory judgment that:

1. confirms Pinkette's unfettered right to commercially use LUSH as its trademark for clothing;

2. CWL's use of LUSH on retail store employee uniforms, sold only internally to its own store employees, does not entitle CWL to exclusive rights in LUSH as a trademark for clothing;

3. there is no trademark infringement, no false association, and no likelihood of confusion between Pinkette's use of LUSH on clothing and CWL's use of LUSH on its own store employee uniforms;

4. there is no trademark infringement, no false association, and no likelihood of confusion between Pinkette's LUSH clothing and CWL's use of LUSH on CWL's gift wrapping options used to wrap purchased cosmetics, perfumes, and related goods;

5. there is no trademark infringement, no false association, and no likelihood of confusion between Pinkette's LUSH clothing and CWL's use of LUSH on its cosmetics, perfumes, and related goods;

6. CWL shall be barred under the doctrine of laches from asserting against Pinkette any likelihood of confusion, no false association, and no trademark infringement between any of CWL's LUSH goods or services and Pinkette's use of LUSH as its trademark for clothing;

7. CWL shall be enjoined from using the term LUSH as a trademark for clothing or otherwise creating any likelihood of confusion, false association with, or trademark infringement of Pinkette's LUSH trademark for clothing;

8. CWL's U.S. Trademark Application Serial No. 86/475,096 is improper, and that CWL must expressly withdraw the application;

1 9. the USPTO shall deem this U.S. Trademark Application Serial No.
2 86/475,096 abandoned or otherwise terminated;

3 10. CWL's petition to cancel, initiating USPTO cancellation proceeding
4 No. 92061660, is improper, and that CWL must expressly stipulate to dismissal of
5 the cancellation proceeding;

6 11. the USPTO shall dismiss this pending cancellation proceeding No.
7 92061660; and

8 12. Pinkette is entitled to its attorneys' fees and costs incurred in this
9 dispute; and to such other and further legal and equitable relief as the Court may
10 deem appropriate.

11
12 Respectfully submitted,
13 CISLO & THOMAS LLP

14
15 Dated: June 30, 2015

16 /s/Kelly W. Cunningham
17 Kelly W. Cunningham, Esq.
18 Daniel M. Cislo, Esq.

19 Attorneys for Plaintiff
20 Pinkette Clothing, Inc.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Proceeding, Plaintiff Pinkette Clothing, Inc. hereby demands a trial by jury on all issues raised by the Complaint that are triable by jury.

Respectfully submitted,
CISLO & THOMAS LLP

Dated: June 30, 2015

/s/Kelly W. Cunningham
Kelly W. Cunningham, Esq.
Daniel M. Cislo, Esq.

Attorneys for Plaintiff
Pinkette Clothing, Inc.

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